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Georgia's Rape Shield Statute and Victim Resources

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Research Guides

Georgia's Rape Shield Statute and Victim Resources

Guide Information

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Overview

Rape Shield Statutes are a legislative attempt to protect victims in rape cases from intrusive inquiries by the exclusion of evidence which might reflect on the character of the witness without a material contribution to the issue of the guilt or innocence of the accused. The statute in Georgia (O.C.G.A. § 24-2-3) prohibits evidence relating to the victim's past sexual behavior, including marital history, mode of dress, general reputation for promiscuity, or sexual mores contrary to community standards. The rape shield statute supersedes all evidentiary exceptions. Past sexual behavior of an alleged rape victim will be prohibited unless the court finds that the behavior directly involved the participation of the defendant and supports an inference that the the defendant could have reasonably believed that the victim consented to the conduct at issue.

Scope

This research guide presents an overview of the Georgia Rape Shield Statute. Specifically, the guide provides the applicable statutes, case law, and secondary sources demonstrating how the legislation is applied to assist attorneys with little or no familiarity with the protections provided to victims under the statute. The guide is also designed to provide a resource to victims of sexual assault and their families in Georgia including Internet resources that identify organizations that provide assistance to victims.

Disclaimer

This guide is a starting point for a law student, attorney, or victim to research the Rape Shield laws in Georgia. This guide should not be considered as legal advice or as a legal opinion on any specific facts or circumstances. If you need legal advice, please contact an attorney. If you need further assistance in researching this topic, please contact a reference librarian in the Georgia State University College of Law library.

About the Author

Cara Comparetta is a third year student at the Georgia State College of Law and will graduate in December 2011. She is a graduate of the University of Georgia with Bachelors of Arts Degrees in Sociology and Anthropology. As a student, Ms. Comparetta has participated in the Health Legal Services Clinic and worked full-time in an Atlanta firm's Litigation practice group. For more information about this bibliography, please contact Professor Nancy Johnson via email at njohnson@gsu.edu.

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Primary Sources

Statutes

GEORGIA CODE

The Official Georgia Code Annotated can be located, free of charge, on-line through LexisNexis.

Evidence

O.C.G.A §24-2-3 (2011)

Matters Not Relevant to the Prosecution of Rape

- A victim's past sexual behavior is not admissible in prosecutions for certain sex offenses.
  - Includes sexual offenses related to rape, aggravated sodomy, aggravated child molestation, and aggravated sexual battery
- For purposes of the code, past sexual behavior includes: marital history, mode of dress, general reputation for promiscuity, nonchastity, or sexual mores contrary to the community standards.
- Exception:
  - Past sexual behavior may be introduced if the court finds that the past sexual behavior directly involved the participation of the accused and finds that the evidence expected to be introduced supports an inference that the accused could have reasonably believed that the complaining witness consented to the conduct complained of in the prosecution.
- Procedure for introducing evidence of past sexual behavior:
  - The defense shall notify the court of intent to introduce evidence, whereupon the court will conduct an in camera hearing to examine the defendant's offer of proof. If, at the conclusion of the hearing, the court finds that any of the evidence introduced at the hearing directly involves the participation of the accused and evidence supports the inference that the accused could have reasonable believed their was consent or is so highly material that it will substantially support a conclusion that the accused reasonably believed that the complaining witness consented to the conduct, the court shall by order state what evidence may be introduced at trial and what manner the evidence may be introduced.

Legislative History:

Formally Code 1933, § 38-202.1. 1976 Ga. Laws 741, § 1 (enacted); 1989 Ga. Laws 272, § 1; 2005 Ga. Laws 20 § 38-202.1; H.R. 170, 2005 Leg., Reg. Sess. (Ga. 2005)

Related Crimes and Offenses

O.C.G.A. § 16-6-1 (2011)

- Rape

O.C.G.A. § 16-6-2 (2011)

- Aggravated Sodomy

O.C.G.A. § 16-6-4 (2011)

- Aggravated child molestation

O.C.G.A. § 16-6-22.2 (2011)

- Aggravated sexual battery

United States and Georgia Constitutions

The Confrontation Clause

U.S.C.A. Const. Amend. 6
The Sixth Amendment to the United States Constitution guarantees the criminal defendant the right to be "confronted with the witnesses against him."
GA. CONST. art. I, § 1, ¶ XIV (West, through 2010 Reg. Sess.)
The Georgia Constitution of 1983 provides that the accused "shall be confronted with the witnesses testifying against such person."

Georgia Administrative Code

Sexual Assault Services Program
Ga. Comp. R. & Regs. r. 144-5-.08 (2010)

The Sexual Assault Services Program was created by the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), 42 U.S.C. § 14043g, and is solely dedicated to the provision of direct intervention and related assistance for victims of sexual assault.
The purpose of the program is to provide intervention, advocacy, accompaniment (e.g., accompanying victims to court, medical facilities,

police departments, etc.), support services, and related assistance for adult, youth, and child victims of sexual assault, family and household members of victims, and those collaterally affected by the sexual assault.
To receive information regarding making an application for these funds, contact the Criminal Justice Coordinating Council (grants.infor@cjcc.ga.gov).

Authority: O.C.G.A. §§ 28-5-122, 35-6A-4 (adopted Jan. 5, 2006)

U.S. Supreme Court Cases

Michigan v. Lucas, 500 U.S. 145, 111 S. Ct. 1743 (1991)

The exclusion of evidence of the defendant's sexual relationship with a rape victim was not per se unconstitutional because preclusion could have been an appropriate sanction for failure to comply with the notice provisions of the Rape Shield Statute.

Court of Appeals of Georgia

Robinson v. State, A10A1968, 2011 WL 923975 (Ga. Ct. App. Mar. 18, 2011)

The trial court erred by striking the testimony regarding the victim's previous alleged sexual conduct with her brother based on its conclusion that the rape shield statute applied to child molestation and sexual battery. The court distinguishes between the charges of sexual battery and aggravated sexual battery and child molestation and aggravated child molestation because only aggravated sexual battery and aggravated child molestation are included in the statute. The case has been remanded for a new trail. The opinion also provides a history of the statute prior to the 2005 amendments.

Birdsong v. State, 298 Ga. App. 322, 680 S.E.2d 159 (2009)

The court found that the trial court did not err in denying defendant's plea in bar of former jeopardy with regard to kidnapping, rape, and other charges for alleged crimes committed against his estranged wife as his counsel violated the Rape Shield Statute in their questioning of the wife. The State was entitled to a mistrial. The court also found that because the purpose of statute is to protect the victim from evidence which might reflect on her character without contributing materially to the issue of guilt or innocence, there appears no meaningful distinction between sexual behavior before and after the crime, so evidence subject to exclusion includes evidence of any sexual behavior by the victim before trial.

Osterhout v. State, 266 Ga. App. 319, 596 S.E.2d 766 (2004)

The defendant was charged with the aggravated assault of his wife in conjunction with a rape charge. The Georgia Court of Appeals found that the trial court properly excluded evidence of the sexual history of the defendant's wife pursuant to the Rape Shield Statute.

Shields v. State, 264 Ga. App. 232, 590 S.E.2d 217 (2003)

Defendant appealed dismissal of his motion for a mistrial. The Court of Appeals found that the trial court did not abuse its discretion by finding that the State did not act in bad faith by not providing the defendant with the victim's complete current address.

Williams v. State, 263 Ga. App. 597, 588 S.E.2d 790 (2003)

Evidence that a child rape victim had sex with her boyfriend prior to the alleged rape was properly excluded where it was insufficiently probative because of the time frame even though it is relevant to show that the victim's pregnancy was not caused by the defendant. Including such evidence would only lead to the inference that the victim was engaging in sexual intercourse with others, reflecting on character without contributing materially to the issue of the defendant's guilt or innocence.

Williams v. State, 251 Ga. App. 137, 553 S.E.2d 823 (2001)

Evidence of the victim's prior rape was not found to be relevant and was not admissible pursuant to the Rape Shield Statute because the evidence cannot be used to show the victim's reputation for nonchastity or confusion of the victim. Therefore, the trial court did not abuse its discretion prohibiting the evidence.

Hicks v. State, 222 Ga. App. 828, 476 S.E.2d 101 (1996)

The court found that incidents that did not involve the defendant and did not support a defense of implied consent are protected by the Rape Shield Statute. Here, evidence of the defendant's conversation with his rape victim regarding her prior sexual abuse was properly excluded.

Veal v. State, 191 Ga. App. 445, 382 S.E.2d 131 (1989)

The court of appeals affirmed the conviction of rape, aggravated sodomy and aggravated assault. The court held that the Georgia Rape Shield Statute protected the rape victim, not the accused, from admission of evidence which might have reflected on the character of the witness without contributing materially to the issue of the guilt or innocence of the accused and that defendant's constitutional rights were not violated when the Rape Shield Statute was invoked.

Griffin v. State, 224 Ga. App. 225, 480 S.E.2d 608 (1987)

The Rape Shield Statute prohibited testimony about a rape victim's past sexual conduct because it did not relate to the defendant and it did not support an inference that the defendant could have reasonably assumed that the victim consented to his conduct.

Supreme Court of Georgia

Richardson v. State, 276 Ga. 639, 581 S.E.2d 528 (2003)

The cross-examination of a rape victim regarding the non-sexual nature of her relationship with a former boyfriend was not excludable under the Rape Shield Statute. Also, the defendant's right of confrontation required that he was able to see the witnesses as they testified.

Smith v. State, 259 Ga. 135, 377 S.E.2d 158 (1989)

Georgia's Rape Shield Law did not bar the admission of testimony to attach the credibility of the victim and as substantive evidence regarding the victim's alleged prior false accusations.

Harris v. State, 257 Ga. 666, 362 S.E.2d 211 (1987)

The court found that the state's interest in the Rape Shield Statute supersedes a criminal defendant's right to confront and cross-examine a witness concerning the victim's past sexual behavior.

Villafranco v. State, 252 Ga. 188, 313 S.E.2d 469 (1984)

The trial court excluded a statement made by the victim prior to the alleged rape. The Supreme Court of Georgia found that the trial court made a reversible error by excluding the admissible statement as evidence of the victim's state of mind and not protected by Georgia's Rape Shield Statute.

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Secondary Sources

American Law Reports

Kristine Cordier Karnezis, *Modern Status of Admissibility, in Forcible Rape Prosecution, of Complainant's Prior Sexual Acts,* 94 A.L.R. 3rd 257 (2011)

- This annotation discusses cases which have determined whether, in a rape prosecution, evidence of the victim witness' prior sexual acts with those other an the accused or with the accused himself is admissible, and as to what issues in the trial such evidence may or may not be admissible.

Dag E. Ytreberg, *Admissibility of Prosecution Evidence on Issue of Consent, That Rape Victim Was a Virgin, Absent Defense Attach on Her Chastity*, 35 A.L.R. 3d 1452(2009)

- This annotation discusses cases that define the scope of the rape shield laws when discussing the issue of the victim's virginity.

Edward L. Raymond, Jr., Annotation, *Admissibility in Prosecution for Sex Offense of Evidence of Victim's Sexual Activity After the Offense*, 81 A.L.R. 4th 1076 (2008)

- This annotation collects and analyzes those cases which have determined whether, in a prosecution for a forcible sex offense, evidence of the complaining witness' consensual sexual activity subsequent to the incident in question is admissible.

Nancy M. King, Annotation, *Impeachment or Cross-examination of Prosecuting Witness in Sexual Offense Trial by Showing that Prosecuting Witness Threatened to Make Similar Charges Against Other Persons*, 71 A.L.R.4th 448 (2008)

- This annotation discusses the distinction between the victim's prior sexual behavior and the victim's propensity to make false statements about sexual misconduct by others.

Treatises

- Agnor's Georgia Evidence by Jennifer Lewis Roberts, Elizabeth G. Rankin, James S. Rankin, Jr, D. Lake Rumsey, Jr.
  Call Number: KFG540 .A94 2008The following are relevant sections:

  Agnor's Georgia Evidence § 10:7, Character in Criminal Cases--Character of the Victim

  Agnor's Georgia Evidence § 10:8, Character in Criminal Cases, Past Sexual Behavior of a Victim

  Agnor's Georgia Evidence § 19:43 Rape Shield Statute

  Agnor's Georgia Evidence § 20:2, Criminal Defendants' Cross-Examination Rights
- Daniel's Georgia Handbook on Criminal Evidence by Judge John Groger
  Call Number: KFG580 .D35
  ISBN: 0314905812The following is the section discussing the Georgia Rape Shield Statute:

  Daniel's Georgia Handbook on Criminal Evidence § 4.59, Rape Shield--Rule 412
- Georgia Criminal Law Case Law Finder

Call Number: KFG561.A53 S26
ISBN: 9781422481370The following is the relevant section:

2-31 Ga. Criminal Law Case Finder § 31-9 (2010)

This section lists cases and annotations of cases relating to Georgia's rape shield statute (O.G.G.A. § 24-2-3).

- Georgia Procedure: Criminal Procedure by Lawyers Cooperative Publishing
  Call Number: KFG530 .G47 1995The following are relevant sections:

  10 Ga. Pro. Criminal Procedure § 24:38, Prior Sexual Behavior of Sexual Assault Victim

  10 Ga. Pro. Criminal Procedure § 24:39, Prior Sexual Behavior of of Sexual Assault Victim--False Accusations.
- Kurtz Criminal Offenses and Defenses in Georgia by Paul M. Kurtz and Robert E. Cleary, Jr.
  Call Number: KFG566.8 .K87The relevant section is:

  R5, Rape
- Molnar Georgia Criminal Law-Crimes and Punishments by Robert E. Cleary, Jr.
  Call Number: KFG561 .M64
  ISBN: 9780314905840The following are relevant sections:

  Molnar Georgia Criminal Law- Crimes and Punishments § 55-1, Rape

  Molnar Georgia Criminal Law- Crimes and Punishments § 55-9, Sexual Battery; Aggravated Sexual Battery

Encyclopedias

20 Ga. Jur. *Criminal Law* § 15:9 (2011)

- Incest; Inquiry Into Victim's Sexual Past
  - Illustrates that, generally, an inquiry into an alleged incest victim's sexual experience with persons other than the defendant is not permitted.

20 Ga. Jur. *Criminal Law* § 16:2 (2011)

- Aggravated Sexual Battery
  - Defines and illustrates aggravated sexual battery under Georgia law.

20 Ga. Jur. *Criminal Law* § 10:41 (2011)

- Victim's Past Sexual Behavior; Rape Shield Statute Exceptions
  - Explains and illustrates cases when the past sexual behavior of the complaining witness may be introduced.

20 Ga. Jur. *Criminal Law* § 10:43 (2011)

- Victim's Past Sexual Behavior; Rape Shield Exceptions--Victim's Motive or State of Mind
  - Illustrates that an alleged rape victim's contemporaneous statements indicating her motive or state of mind are not deemed inadmissible under the Rape Shield Statute. Evidence of prior rapes is not admissible to show the victim's reputation for nonchastity, preoccupation with sex, or confusion of the victim.

20 Ga. Jur. *Criminal Law* § 10:44 (2011)

- Victim's Past Sexual Behavior; Rape Shield Exceptions--Prior False Allegations by Victim
  - Explains and illustrates when, under the exception to the rule, evidence of prior false accusations of rape is admissible to attack the credibility of the victim and as substantive evidence to prove that the offense in question did not occur.

20 Ga. Jur. *Criminal Law* § 10:45 (2011)

- Procedure for Introducing Evidence
  - Describes and illustrates the procedure for introducing evidence under the exceptions to the Rape Shield law.

20 Ga. Jur. *Criminal Law* § 11:16 (2011)

- Victim's Sexual Past

- Illustrates that inquiry into the past sexual behavior of an alleged aggravated sodomy victim is impermissible.

20 Ga. Jur. *Criminal Law* § 12:17 (2011)

- Evidence of Victim's Sexual Past; Prior Molestation by Others
  - Illustrates that in a child molestation prosecution, evidence as to the victim's reputation for nonchastity is inadmissible, and evidence may not be admitted to discredit the victim by showing his or her preoccupation with sex.

20 Ga. Jur. *Criminal Law* § 12:18 (2011)

- Evidence of Victim's Sexual Past; Prior Molestation by Others--Applicability of the Rape Shield Statute
  - Provides case law that illustrates that the Rape Shield Statute is applicable in child molestation cases.

Forms

- Brown Georgia Pleading, Practice and Legal Forms Annotated, 3rd ed. by Daniel F. Hinkel
  Call Number: KFG535.A65 B7 3rd ed.6 Brown Georgia Pleading, Prac. & Legal Forms Anno. § 24-2-3 Form 1, Motion for In-Camera Hearing Regarding Rape Shield Act
- Daniel's Georgia Criminal Trial Practice Forms by John J. Goger
  Call Number: KFG575.A65 D36 2006 c.1Daniel's Georgia Criminal Trial Practice Forms § 17:27, Motion for In-Camera Hearing Re: Rape Shield Act

  Daniel's Georgia Criminal Trial Practice Forms § 14:145, Notice of Defendant's Intent to Introduce Evidence Relating to Past Sexual Behavior of Alleged Victim

  Daniel's Georgia Criminal Trial Practice Forms § 17:27.50, Defendant's Motion to Pierce the Georgia Rape Shield Statute

Law Journal Articles

Thomas A. Mitchell, *We're Only Fooling Ourselves: A Critical Analysis of the Biases Inherent in the Legal System's Treatment of Rape Victims: (Or Learning from our Mistakes: Abandoning a Fundamentally Prejudiced System & Moving Toward a Rational Jurisprudence of Rape)*, 18, Buff. Women's L. J. 73 (2010)

This article discusses the changes that have taken place in the American legal system with the intention to protect victims of rape. Whether actual progress has been made is questioned. Both sides of the issue, the reformers and defendant's rights advocates, are examined.

Antonia S. Lee, *Rape, Sexual Assault & Evidentiary Matters*, 8 Geo. J. Gender & L. 371 (2007)

This article discusses the various approaches different states take in determining what evidence is admissible in a victim's history are subject to judicial discretion. Because of this discretion, it is argued that the statutes may have consequences that may not be congruent with the original intent.

John McDonough, *Consent v. Credibility: The Complications of Evidentiary Purpose Rape Shield Statutes*, 5 Law & Soc'y J. UCSB 11 (2005)

This article discusses the development of rape shield statutes in different states and investigates whether the statutes actually exclude evidence of a victim's sexual past. The article questions whether the statutes are achieving their objective.

Andrea A. Curcio, *The Georgia Roundtable Discussion Model: Another Way to Approach Reforming Rape Laws*, 20 Ga. St. U. L. 565 (2004)

This article gives an overview of the issues facing the criminal justice system when dealing with sexual violence and addresses how groups of reformers can improve their handling and processing of sexual assault cases. Although the article was written prior to the statutory amendments of 2005, there is useful information regarding the use of the Georgia Supreme Court Commission on Equality roundtable discussion to create solutions to sexual violence.

Practice Materials

- Courtroom Handbook on Georgia Evidence by Paul S. Milich
  Call Number: KFG540 .M542 c.1
  ISBN: 0314905855This is a convenient handbook that will help identify and find essential evidentiary information. The content is organized into more than 100 topical entries. The relevant section for the Georgia Rape Shield Statute is R1, Rape Victim Shield Law.
- Daniel's Georgia Criminal Trial Practice, 2010-2011 ed. by Judge John Goger
  ISBN: 0314905839This book is a practical manual that reviews issues common to the criminal justice process, beginning with the investigation of a criminal case, continuing through post-conviction remedies.
- Trial Practice: Exercises in Witness Examination and the Rules of Evidence by Paul S. Milich
  Call Number: KF8935.Z9 M5 2005 c.1
  ISBN: 9780314163059The text, written in workbook format, contains 35 simulations providing a hands-on format that engages students in the subject matter while teaching

practical skills required in legal practice.

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Computerized Research and Victim Resources

Books

- Sexual Assault: The Victims, the Perpetrators, and the Criminal Justice System by Frances P. Reddington and Betsy Wright Kreisel
  Call Number: HV6561 .S475 2005
  ISBN: 1594605777This book gives an overview of sexual assault, examining its victimology, discussing the sexual offender, and looking at the role the criminal justice system plays.
- Sourcebook on Violence Against Women by Claire M. Renzetti, Jeffrey L. Edleson, and Raquel Kennedy Bergen
  Call Number: HV6250.4.W65 S68 2011This book is a resource that provides extensive coverage of the current state of research, theory, prevention, and intervention regarding violence against women.
- Talking About Sexual Assault: Society's Response to Survivors (Psychology of Women) by Sarah E. Ullman
  Call Number: HV6558 .U45 2010This book provides a comprehensive look at women's rape disclosure, addressing such issues as why, how often, and to whom women disclose their sexual assault; how people respond to disclosures; what factors influence how they respond to disclosures; and how these responses affect survivors. Recommendations for research, treatment, and intervention are provided.

Victim Resources and Interest Groups

Dekalb Rape Crisis Center (DRCC)

Crisis Hotline: 404-377-1438

DeKalb Rape Crisis Center (DRCC) provides direct services, prevention education, and advocacy for youth and adult survivors of sexual assault, their families and the community as a whole. Services include a 24-hour crisis intervention hotline, hospital accompaniment, individual counseling and support groups, legal advocacy and prevention education.

Georgia Network to End Sexual Assault

Georgia Network to End Sexual Assault (GNESA) is a non-profit coalition of sexual assault agencies and concerned individuals that share the common goal of ending sexual assault. The website lists sexual assault centers by county with contact information

To find a rape crisis center, GNESA provides a list sexual assault centers by county. GNESA also provides information regarding what to do after an assault takes place, rape trauma syndrome, and information for friends of family of a victim of sexual assault.

National Sexual Assault Hotline

Assault Hotline: 1-800-656-HOPE

Online Hotline

The 24/7 hotlines are operated by the Rape, Abuse, and Incest National Network (RAINN). RAINN is the nation's largest anti-sexual violence organization that leads national efforts to prevent sexual violence, improve services to victims and ensure that rapists are brought to justice.

Georgia Victim Assistance

In 1995, the State of Georgia has adopted the Georgia Crime Victims Bill of Rights (O.C.G.A. 17-17-1C16) to recognize the public responsibility to victims injured as a result of criminal activity including sexual offenses by requiring state agencies to join forces to form the Multi-Agency Victim Services Partnership.

The Criminal Justice Coordinating Counsel's Georgia Crime Victim Compensation Program helps victims and witnesses of violent crime who are injured or threatened with an injury. CVCP will compensate for medical care, counseling services, income lose, crime scene clean up, and funeral expenses when costs are not covered by other sources.

National Sexual Violence Resource Center (NSVRC)

The NSVRC is an information and resource center that provides leadership, consultation, and technical assistance by generating the development of information on sexual violence intervention and prevention strategies. The center posts publications, projects, updated news, and a blog.

Georgia Bureau of Investigation Sex Offender Registry

O.C.G.A. § 42-1-12 provides that the Georgia Bureau of Investigation is the central repository for Georgia's Violent Sexual Offender Registry. The registry provides the ability to search pages for sexual offenders, predators, and absconders. Additionally, the GBI maintains a map of offenders organized by county.

Search Terms

rape, sexual, prosecutor, sexual assault, rape cases, violence, recommend, resistance, juror, rape victims, acquaintance, indictment, sentence, shield law, protocol, processing, phase, justice system's, kit, mandatory minimum, arrest, felony, case law, offender, prior rape, sex, jury instructions, sexual history

Search Engines

- **Google Scholar**
  - Google Scholar provides a free, simple way to broadly search for scholarly literature. Searches can be conducted across many disciplines and sources: articles, theses, books, abstracts and court opinions, from academic publishers, professional societies, online repositories, universities and other web sites. Google Scholar helps you find relevant work across the world of scholarly research.
- **O.C.G.A on LexisNexis**
  - This site provides free access to the Official Code of Georgia. No case law or other state materials are offered. The Code is updated one time per year once the supplement to the print edition of the O.C.G.A. has been prepared and distributed to subscribers.
- **Loislaw**
  - Loislaw is a comprehensive, easy-to-use, and affordable online legal research service. The service includes federal and state materials including case law, codes, administrative codes, court rules, administrative decisions, attorney general opinions and bar publications. Additionally, the site provides GlobalCite citator service.
- **Findlaw**
  - FindLaw's Cases and Codes section contains free resources and links for both state and federal laws. Georgia statutes and case law from the Georgia Supreme Court and Georgia Court of Appeals can be found with a search on this site.

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